

Agenda

Paid Sick Leave Meeting on July 22, 2011, Boards and Commissions Room, City Hall

Overall Purpose of the Meetings:

To identify, clarify and, where possible, resolve areas of concern in CB # 117216 creating paid sick leave in Seattle.

Overall operating principles:

- 1) No one should be required to work when ill.
- 2) No one should lose income when they are unable to work because of illness.
- 3) No one should fear losing their employment if they are unable to work because of illness
- 4) No business should have its ability to sustain itself jeopardized by having to meet the requirements of the proposed paid sick leave ordinance.

Purpose of the Meeting: To share information regarding outstanding issues in order to gain a deeper understanding of the issues from a variety of viewpoints. To gain sufficient clarity about the identified outstanding issues to prepare participants for creative problem solving and development of proposals to resolve the issues. To review and consider modifications to the initial draft list of options.

Assumption: the issues to be discussed are the ones identified in the issue compilation document. Generally are not looking for any new issues.

Ground Rules:

1. Attend with an open and inquiring mind: Strive towards understanding issue and coming up with constructive proposals
2. Respect the diversity of viewpoints
3. Abide by the "law of two feet" (Can leave at any time if no longer want to be involved)
4. Accept the Operating Principles
5. If agreement is reached, it is expected that at a minimum you (your entity) will take a neutral position on the ordinance and, if possible, publically support it.

Agenda:

2:30-2:40pm: Review purpose of the meetings, introductions

2:40-3:00pm: Review and clarification of Issues: What is in the legislation

3:00-3:10pm: Consideration of any remaining overall questions and information participants need to know to be able to creatively problem solve and develop options

3:10-4:20pm: Review and consideration of modifications to draft options

4:20-4:30pm: Next steps and review of "homework assignments"

Paid Sick Leave: Identified Issues and Potential Options

I. Applicability:

- Seasonal/Temporary workers
- Independent Contractors
- Day laborers
- Employees on assignment (temporary worker agencies – not eligible to take sick leave if not on assignment)
- Part-time workers (less than 20 hours/week)
- Micro business (1-4/10), small business (5-19/50)
- Employees of companies based outside of Seattle who perform work in Seattle: 80 hour threshold, 250 hour threshold, percentage of time worked in Seattle
- Manufacturing
- Home health care
- Hardship exemption as in DC ordinance

II. Maximum Sick/Safe Time:

- Time available based on business size
- Flat number based on average number of days offered in private sector (8 days)
- Based on “full-time equivalent”
- PTO plans and Tier 3 “major employers”: 18 days total, 9 paid sick/safe or same provision as for Tier 1 & 2 employers
- PTO plans and floating holidays and personal leave days

III. Initial accrual of paid leave:

- Date of hire
- 90, 180 days after hire

IV. Initial eligibility for paid leave:

- 90, 180 days
- One year
- Define eligibility in terms of cumulative hours worked rather than cumulative days
- Require that initial period of employment, whether measured in days or hours, to occur within a 24 month period. (Provides leave benefit to seasonal workers, minimizes record-keeping requirement. Not mutually exclusive of first three.)

V. Compensation rate:

- Same hourly rate as would have earned if worked

- Capped (one suggestion is \$30/hour)

VI. Breaks in Service:

- Retain 9-month period for immediate eligibility, but do not provide for retention of unused leave
- Shorten period over which eligibility and/or leave balances are maintained: 3 or 6 months

VII. Documentation:

- Simplify
- Provide alternative performance standard
- Costs of documentation of medical care: Retain proposed requirement, decrease Tier 3 requirement to 50%, or eliminate requirement to pay cost

VIII. Right to waive paid leave benefit as part of a collective bargaining process

IX. Premium Pay exemption:

- Exempt premium pay systems for temporary employees or allow temporary workers to waive benefits in exchange for premium pay

X. Shift issues

- Extend shift swapping to Tier 3 firms
- How to handle employees who work 10 or 12 hour shifts

XI. Workers with variable pay

- Allow Office of Civil Rights to resolve through administrative rules, or set "sick pay" equal to rate earned during previous pay period, or perhaps average over previous 3 months

XII. Other issues:

- Extend "new business" exemption to new branches of existing businesses
- Extend "statute of limitations" to three years, rather than two years
- Ensure that internal cooperative models (donating sick leave time to employees who have run out) are allowed without penalizing employer or employee
- Encourage use of external cooperative models as alternative approach (like workers compensation system)
- Abuse by employee provision

NOTES -- Paid Sick Leave Stakeholder Meeting, July 22, 2011

Present: Council President Richard Conlin, Councilmember Nick Licata, Dave Gering, Dave Namura, George Allen, Holly Chisa, Jody Hall, Josh McDonald, Joshua Welter, Maiko Winkler-Chin, Makini Howell, Marilyn Watkins, Mona Smith, Patti Mullen, Steve Meyer, Steve Williamson, Susan Davis, Lisa Herbold, Sara Nelson, Ben Noble, Phyllis Shulman, Laurel Humphrey

From the discussion of Operating Principles and Ground Rules

- Ground Rule #5 raises concerns. Attendees can't control the actions of their Board, for example. (Licata: #5 is "aspirational." Those present should convey the intent to their memberships)

Identified Issues and Potential Options

1. *Applicability threshold*

As drafted, employees who work 80 or more than hours in Seattle are eligible for the paid leave benefit.

Policy interests: Establish paid sick leave as broadly as possible, but not unduly burden businesses with record-keeping requirements.

Potential options identified in committee include:

- Retain 80 hour threshold.
- Increase threshold to 250 hours (or some other number, but tied to hours worked).
- Set threshold as a percentage of time worked in Seattle – the specific option here is that workers would be eligible to accrue leave if they work at least 25% of their time in the city.

From discussion:

- What about drivers not based in Seattle, but who make deliveries here?
- What about interns/on-call/Americorps/work study/other non-traditional types?
- What if time worked cannot be tracked accurately? What remedies are there?
- Many manufacturing/industrial employers already provide this benefit-- why should they support this bill that adds an extra layer of paperwork/burden?
- Where does the 25% figure come from?
- What about crews based in Seattle, but do work region-wide?

2. *Initial accrual of paid leave*

As proposed, employees begin to *accrue* sick leave on the date hire but are *eligible to use* leave after 90 days (for Tier 3) or 180 days (for Tier 1 and 2) of employment.

Policy interests: Provide robust benefits, but provide incentives for workers to stay with employer and also minimize changes to current benefit systems.

Potential options identified in committee include:

- Retain proposed system.
- Delay initial accrual until after some period of employment, perhaps the same 90 and 180 days that trigger eligibility to take leave.

From discussion:

- Bill as written does not provide for retroactive accumulation, but does not define it and should.
- Is there an industry standard for probationary periods?
- Intermittent employment raises many questions and could be clarified.
- Where do the numbers (90 and 180) come from?

3. *Initial eligibility for paid leave*

As note immediately above, employees would be eligible to use paid leave after 90 days or 180 days of employment. This period of employment is cumulative not consecutive. So, for example, a seasonal or part-time employee of a Tier 1 or Tier 2 company who works 120 days each year would be eligible for sick leave half-way through his/her second year of employment

Policy interests: Provide seasonal and part-time employees with a fair paid leave benefit, while maintaining incentives for employees to stay with employer, treating full- and part-time employees equitably, and minimizing costs and/or record-keeping requirements.

Potential options identified in Committee include:

- Retain proposed system.
- Extend period before eligibility to as much as one year.
- Define eligibility in terms of cumulative hours worked rather than cumulative days.
- Require that initial period of employment, whether measured in days or hours, to occur within a 24 month period. *(This provides leave benefit to seasonal workers, but minimizes historic record-keeping requirement for employers. This option is not mutually exclusive of first three.)*

From discussion:

- Is there flexibility in applying policies? It is problematic to be a large employer with people both inside and outside Seattle. Does employer apply a different standard to only the Seattle employees?
- Would law apply to an employee not currently on payroll?
- Is there an expectation of tracking hours accumulated over an indefinite period?

4. *Workers with variable pay*

The legislation does not currently address what rate of "sick" pay should be awarded to workers who do not have fixed wage rates, or whose pay varies with assignments and duties.

Policy interests: Provide a fair rate of compensation, but offer enough flexibility to address situations where workers earn variable pay.

Potential options include:

- Allow Office of Civil Rights to resolve through administrative rules.
- Set "sick pay" equal to rate earned during previous pay period, or perhaps average over previous 3 months.

From discussion:

- Is the City going to decide the rate of pay? (City law will supercede the collective bargaining agreement (CBA) as of ordinance effective date)
- Seasonal workers merit a careful look here
- What about tips/commissions? These are not part of legal wages. Ordinance should be more clear on this issue-- add to definitions.

5. Breaks in Service

If a worker is separated from employment and rehired by the same firm within 9 months, they would be immediately eligible for sick leave and have access to any unused leave from their previous period of employment.

Policy interests: Provide employees with a fair paid leave benefit, while maintaining incentives for employees to stay with employer and minimizing costs and/or record-keeping requirements.

Potential options include:

- Maintain proposed system.
- Retain 9 month period for immediate eligibility, but do not provide for retention of unused leave.
- Shorten period over which eligibility and/or leave balances are maintained.

From discussion: No comments or questions raised

6. How much Sick/Safe Time should be required?

Employers would be required to provide 5, 7 or 9 days per year of paid sick and safe leave, depending on the size of the firm. (These totals are based on full-time employees and would be prorated for part-time workers.) Unused time could be carried over from one year to the next, but the carry-over can be limited to the same 5, 7 and 9 day balances that can accrue in any single year.

Policy interests: Average use of paid sick leave is generally low (~3 days/year), some individuals may suffer one or more prolonged illnesses. Thus, the average number is not the appropriate level to set as a requirement given the policy goals. More generous requirements will help minimize the financial incentives to work when ill, but the specific leave requirements must be weighed against the costs imposed on employers. The data suggests that the ability of firms to afford the costs of such leave increases with firm size.

- *Potential options include:*
- *Flat number*
- *Based on FTE*
- *PTO plans and floating holidays and personal leave days*
- *Should major employers with PTO plans have same requirement as other Tiers?*

From discussion:

- What was the justification for these 5/7/9 requirements?
- Why do people who happen to work for largest employers "deserve" a better benefit?

7. *Paying for the costs of medical documentation*

Employers would be allowed to request documentation for absences of more than 3 days. Employers who offer PTO but do *not* offer health insurance would be required to share in any out-of-pocket costs that employees incur in securing such documentation. Tier 1 and Tier 2 employers would have to pay 50% of the cost; Tier 3 employers 100%.

Policy interests: Avoid the costs of documentation becoming a barrier to taking leave, while not unduly burdening the employer or limiting authority to verify purpose of leave.

Potential options identified in Committee include:

- Retain proposed requirement.
- Decrease Tier 3 requirement to 50%.
- Eliminate requirement to pay cost of documentation.

From discussion:

- Can documentation be simplified for the employer?
- Out-of-pocket costs need to be defined
- Complaint-driven system
- What if an employee declines the employer-offered health insurance?
- What is the definition of health insurance?

8. *Right to waive paid leave benefit as part of a collective bargaining process*

The proposed ordinance currently allows such waivers.

Policy interests: Remove incentive for employees to work when ill by establishing a paid leave requirement, but not to discourage employees from negotiating for complementary benefits such as healthcare.

From discussion:

- Has there been consideration of credit for those already paying?
- Possible solution: delay implementation of law until the CBA has cycled through.

9. *Right of temporary workers to waive paid leave benefits in exchange for premium pay*

Draft currently precludes such waivers at an individual level.

Policy interests: Establish paid sick leave as broadly as possible, but also provide appropriate flexibility for employers and employees.

From discussion:

- Provide definition of premium pay (what % above starting wage?)

10. *Shift swapping for Tier 3 firms (Tier 3 = 250+ FTE)*

The proposed ordinance includes shift-swapping provisions that apply to Tier 1 and Tier 2, but not Tier 3 firms. The swap provisions require that:

- Swaps are purely voluntary – the employer is not obligated to offer a substitute shift and employees are not obligated to accept a substitute shift.
- If an employee accepts a substitute shift, the time off will still be deducted from their balance of earned leave.

Note that the standard employee-to-employee swaps that occur now would be permitted without restriction (assuming employer approves).

Policy interests: Avoid incentives for employees to work when ill, but provide flexibility for employers and employees. Swap provision achieve both goals.

Proposed Option:

- Extend shift swapping to Tier 3 firms.

From discussion: No comments or questions raised

11. *Other possible issues:*

- Extend “new business” exemption to new branches of existing businesses.
- Extend “statute of limitations to three years, rather than two
- Ensure that internal cooperative models (donating sick leave time to employees who have run out) are allowed
- Encourage and develop use of external cooperative models as alternative approach (workers’ compensation program)
- Abuse by employee provision?

From discussion:

- Is the presumption that leave is taken in day increments (in other words, is the employer required to track minute/hour increments?).
 - It was clarified that PSL accrues by the hour and can be used in hour-long increments or shorter (per the accounting system of the employer).
- What is the implication for short-term disability?

New Issues

Education/promotion to all employers in Seattle

- Particular concern about employers whose primary language is not English.

Definition of size of employer

- How many employees total versus how many of those employees work in Seattle.
 - It was clarified that size of employer equals the total number of employees (both inside and outside Seattle). So, for example, the tier of a company with 3 stores/restaurants – one in Seattle, two outside Seattle but all under the same ownership – would be determined by the total number of employees.
- Is there any flexibility to qualify for a lower tier?

Is there an opportunity for employer to demonstrate it meets the principles of the law in another form? George Allen will bring back examples of what those other forms look like.

Can there be a mechanism by which an employer *who already offers comparable benefit* to be certified and opt-out of this law?

Complaint-based system means that aggrieved employees have a mechanism for enforcement.

What is the mechanism for dispute resolution? (Straight to courts = \$\$\$)

- First step in dispute resolution is OCR-- let's invite OCR to the table.

Consider ways to incentivize employers such as lower taxes, expedited/discounted permitting, etc.

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What is the definition of an employer?

Is Committee action on August 10 too soon? (Some feel rushed at this point.)

Decision was to evaluate where things are at the end of the August 2 meeting. The need for a possible third meeting would be considered with the understanding that Councilmembers are the final decision-makers.

Wrap-up:

Next meeting is August 2, 10:30 a.m. - 12:30 p.m., City Hall Room 370.

Homework: Review options, modify and/or add new. Submit in writing on Friday, July 29.